



Tennessee State Board of Accountancy
Department of Commerce and Insurance
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MEETING MINUTES

August 3, 2007

The meeting of the Tennessee State Board of Accountancy convened in the Davy Crockett Tower, Nashville, Tennessee on Friday August 3, 2007, at 8:30 am.

Members present were Chairman Kenneth Cozart, Vice Chairman Vic Alexander, Secretary William Underwood, Alfred Creswell, Teresa Jeter-McAvoy, Shannone Raybon, Stanley Sawyer, Lisa Mays Stickel, and Douglas Warren.

Also present were Linda Biek, Executive Director; Wayne Pugh, Staff Counsel; Mark Crocker, Investigator; and Gail York, Administrative Assistant III.

Ms. Biek requested a minute to present previous Chairman, Douglas Warren, with a commemorative gavel. Ms. Biek then introduced two new employees, Mary Flagg & Gail York, and informed the members that the Board now had a full staff.

Mr. Cozart called the meeting to order and held prayer. He then informed the Board that the Formal Hearing scheduled for that morning had been cancelled. Everyone was informed that Assistant Commissioner Sullivan is requiring Board members to sign a Conflict of Interest form each year. Ms. Biek commented that everyone had signed one at the previous board meeting and that forms would be presented annual at the July/August meeting.

Mr. Cozart then moved on to the **Consent Agenda**. The Consent Agenda was presented with a motion to accept by Mr. Sawyer and a second by Mr. Underwood. The motion passed.

Next, Ms. Biek presented the **Executive Director's Report**. She thanked everyone for their participation at the committee meetings and asked the Board to please be patient during the training of new staff. The following action items were addressed.

Ms. Biek discussed the fact that members of the staff often notice, serendipitously, that an individual or firm has used the word CPA or accountant in their communications without obtaining proper licensure. Ms. Biek would like to implement a policy which allows the Executive Director to write a letter to a firm or individual advising them of the Accountancy laws and rules. She would notify them that it is illegal to use this terminology if they are not licensed and allow them 30-60 days to comply with the law. Otherwise, a complaint would be filed against them. A complaint is always filed anytime the public files complain about someone so this would only be when the staff has noticed a potential violation. A motion was made by Mr. Alexander to approve the proposed policy and was seconded by Mr. Warren. The motion passed.

Ms. Biek congratulated Staff Counsel, Wayne Pugh, for effectively soliciting the assistance of the Attorney General's Office to collect \$750 for the Board of Accountancy. This is the first time in more than 11 years that the two agencies have worked together on a case.

Ms. Biek asked for guidance regarding the results from PCAOB reports which show serious deficiencies. She pointed out that if a small firm has a deficiency they have a complaint filed against them which typically ends with a civil penalty. The Board discussed this matter and determined that the results from the PCAOB reports are similar to the results from a peer review. Since complaints are not typically filed on peer review results, it is reasonable to withhold filing a complaint on PCAOB reports. The Board agreed that the Ms. Biek should continue to monitor the PCAOB results and notify them of anything unusual.

Ms. Biek informed the Board that she and Mr. Cozart would not be attending the TSCPA Board retreat, as had been reported in May. She and Mr. Underwood will go to Legislative Committee meeting later in the day and will present any issues that need to be addressed.

Ms. Biek informed the Board that the draft report of the Performance Audit had been prepared. The Commissioner of the Department of Commerce and Insurance had responded to the observations and findings set forth in the Audit. Ms. Biek received the report and the Department's response and was invited by the Comptroller's Office to respond. She is drafting a response which will be signed by Mr. Cozart.

In detail, the observations addressed three matters. The first was the 2006 renewal postcards. A solution was discussed in Licensing Committee meeting and will be implemented with the 2007 renewals. The second observation was the fact that the Tennessee Board of Accountancy is self sufficient & they may spend their money as seen fit as long as it is reasonable and budgeted. This is an on-going conversation. The third observation requires the annually signing of the Conflict of Interest forms and has been discussed previously.

The backlog of complaints was listed as a finding. Ms. Biek stated that, when she took over as Executive Director four years ago, there were 160 complaints. Now, the number

of complaints averages 60-70, so this area has improved tremendously. The conclusion is that the findings and recommendations need a response. Once all parties have responded, reports will go to a subcommittee of the legislature in the fall. They will determine whether the Tennessee Board of Accountancy should continue or be sunset. This should be settled before the next Board meeting in October.

Ms. Biek discussed the new concept of discussing emerging issues. She and Mr. Warren spoke after the committee meetings and decided these would be added to the Executive Director Report. The emerging issues will be issues that have emerged through the committee meetings and will be presented to the full board for discussion.

One emerging issue deals with peer reviews. She informed the Board that all results are confidential. An acceptance letter is sent to the Board as proof that the firm has complied with the requirements, but the results are not. When the peer review process began about 15 years ago, it was for educational purposes. The AICPA now sends the results of peer reviews to states that can accept them for firms. Teresa Jeter-McAvoy stated that a firm could opt out if they did not want the state to get the peer review results. There was much discussion on this matter because more states are bringing in enforcement as part of the peer review process. Ms. Biek indicated that she did not advocate using the results for enforcement purposes but felt that, in the interest of public protection, she would like for Tennessee to be able to obtain the results from the AICPA if the firm does not opt out.

The final stance of the Board was that peer reviews were not an enforcement tool and the law should not be changed to allow Tennessee to access the results that are available through the AICPA. Ms. Biek stated that other states are already accessing this information. Mr. Warren asked Ms. Biek to clarify how the system works if the firm operates in two different states and one of the states holds the information confidential. Ms. Biek agreed to do this and stated that she felt that if the Board wanted a change they needed to get it in the Commissioner's legislative package as soon as possible. Mr. Pugh informed the Board that just because they wanted it in the package does not mean it will be included in the package. Ms. Biek suggested that this issue be researched and tabled until next year. Mr. Alexander made motion to table the issue and Mr. Underwood seconded the motion. The motion passed.

Mr. Cozart asked if there were anymore emerging issues. Ms. Biek discussed the new "mobility" law which passed in April. She informed the Board that she had a video from the AICPA available for viewing. The AICPA & NASBA encouraged states to change the law to make it easier for CPAs to perform interstate practice without going through a notification process. She said that all states have different laws, but with the new law in Tennessee, CPAs can come in from other states and practice. The new law means the Board can discipline a licensee from another state if they perform substandard work. The new law centers on "NO NOTIFICATION, NO FEE, NO ESCAPE" and will be discussed further in the F&A Committee report. She informed the Board that more than 10 states now have the mobility law.

Ms. Biek asked Mr. Pugh to educate the Board regarding the involvement they can have in the legislative process. He stated the word "bootlegging" refers to his activities more than those of the Board. He stated that, as an employee of the State of Tennessee, he could not help draft legislation for an outside party. He could be fired for this type of practice. Mr. Pugh informed the meeting that the Department could only carry so many bills and all matters had to be reviewed by the Governor's office. He stated the Board is an independent agency and could present whatever opinions they have to legislation, but they could not put those comments on State letterhead. They may use letterhead designed especially for the Board which does not include the state seal. This concluded Ms. Biek's report.

Wayne Pugh presented the **Attorney's report**. Mr. Pugh began by addressing a few matters. First, the wording in the rule pertaining to late renewals should be changed from "it may result" to "it shall result." Secondly, the Board needs to reword the rules pertaining to peer reviews. He will work with Ms. Biek on the wording and represent to the Board at a later date.

The **Probable Cause Committee** went over the Legal Report in their meeting on Thursday. Mr. Alexander summarized the legal report as follows. He stated that there were four informal conferences since the last Board meeting. He added that the Committee had assessed civil penalties totaling \$18,050; issued one warning letter; authorized scheduling of one formal hearing; closed four files and dismissed three complaints. Mr. Underwood inquired about a case in which the individual was not telling the truth. Mr. Alexander stated that was correct and that the situation was addressed. Mr. Underwood made the motion to accept the Probable Cause Committee report and Ms. Stickel seconded the motion. The motion passed.

The meeting continued with a report from the chair of the **Finance and Administration Committee**. Mr. Underwood addressed the Board and turned the report over to Ms. Biek to discuss Tenn. Code Ann. 62-1-117. She read the appropriate section of the law and informed the members that the wording seems to pertain to individuals only and not firms. This appears to be a conflict with another portion of that law which allows individuals the practice privilege without obtaining a CPA or firm license. She would like to advise the Board that they interpret that section of the law to include firms. Eventually, the words "or a firm" need to be added to the appropriate sections of Tenn. Code Ann. 62-1-117 to eliminate the conflict.

She continued with an example from the state of Virginia. Their law requires that firms have to be registered and that they participate in the peer review process if the firm performs attest services. The state of Colorado does not require Peer Reviews so if a firm which is from Colorado performs attest services in Tennessee, Ms. Biek is concerned about the quality of their work. The current law would allow them to come into Tennessee without registering so Mr. Pugh advised that the Board review Tenn. Code Ann. 62-1-103 to determine if the definition of substantially equivalent can be expanded to include firm requirements. She asked if everyone was comfortable with this or if there were any questions. Mr. Pugh asked the board to determine if a firm can come into

Tennessee without notification although the law refers to "an individual." Mr. Cozart said a sole proprietor is recognized as a firm. Mr. Pugh agreed and indicated that the law covers an individual but that improved wording regarding firms would be beneficial. Mr. Alexander and Mr. Warren both had questions pertaining to this matter. Ms. Biek suggested the addition of "or firm" to clear up the matter. Mr. Cozart stated Will Pugh presented this matter to him and asked that Attorney Pugh review Rule 20-1-.11 and determine if it appropriately addresses the situation. Attorney Pugh indicated that this is a conflict between the statute and the rules. Mr. Underwood wanted to know the objective, Ms. Biek replied it would allow out of state firms to come in without registering. She stated that this matter may need to be discussed more before making a decision. Mr. Creswell confirmed his understanding that an individual may come to practice without registering but a corporation or partnership cannot. Attorney Pugh concurred. Ms. Biek advised that the wording be cleared up because several different attorneys have expressed their concern regarding the interpretation. Mr. Cozart stated that Mr. Will Pugh had brought this to his attention and feels it needed to be cleared up. He thinks this is a good reason for everyone to attend some of the NASBA meetings since the breakout sessions with other states allows board members to determine what other states are doing. **Mr. Sawyer made a motion that the board support the law change to add "or firm" and Mr. Underwood seconded the motion. The motion passed.**

The Board discussed the possibility of extinguishing the state board peer review program which would require firms enrolled in the program to obtain peer review services through the TSCPA program. The decision was made to hold off on this until further information is gathered. This concluded the Peer Review report.

The chair of the **F&A Committee** presented the report which began with the 2007-08 budget. There were questions about travel and on-line renewals. These matters were discussed and the Board was informed that overall expenses were at 98% of the budgeted amount. **Motion was made to approve the budget by Mr. Warren and to delegate travel to the F&A Committee; the motion was seconded by Teresa Jeter-McAvoy. The motion passed.**

Board was informed that the continued evaluation of the SWOT Analysis was very important in identifying the goals and objectives of the Board. Everyone will receive the analysis via e-mail and is encouraged to fill out and submit before the next meeting.

Licensing Committee Report is next, Teresa Jeter-McAvoy indicated that the Committee approved the Tennessee exempt corporations that were presented. In addition, Western was approved to offer the state-specific ethics course. **Motion was made by Mr. Cozart to accept these vendors and the course and seconded by Vic Alexander. The motion passed.**

Ms. McAvoy also discussed the substance abuse program which had been approved by the Board and included in the 2007-08 budget. She stated that the Committee recommends adoption of a program similar to Texas program called ACAN. Mr. Floyd and Ms. Biek have a meeting scheduled with the Director of ACAN in November.

Ms. McAvoy also presented a situation involving a CPA who wanted to reinstate her license. Further review by board staff indicated that this individual notified Texas that she was exempt from CPE in Texas because she was not a resident of Texas. She informed Tennessee that she was complying with Texas requirements. Based on this conflict of information, the committee recommends that a complaint be filed. The Board was also informed that 131 new licenses were issued since the last meeting. This concludes the report.

Mr. Creswell presented the **Peer Review Meeting Report** next. He said they reviewed the files for 12 randomly selected firm permits and found no exception. Dan Syriac presented the statistics for 2006 peer reviews and state that the peer reviews were still in a pending phase since they are not due until 8/31/07. In previous committee meeting, the committee was informed that there were 8 firms who had not had peer review or responded to board communication. Mr. Syriac informed the committee members that complaints had been filed against these firms.

The Peer Review Oversight Committee is looking for a person in West Tennessee to fill a 3 year contract. The current contract ends on September 30, 2007. Mr. Floyd proceeded to educate board members regarding the safe guards that are in place to ensure that peer reviewers are performing quality services. This concluded the Committee's report.

The report for the **Executive Committee Meeting** was presented and Mr. Cozart stated that they had approved a 4½ percent pay increase for Linda Biek and Mark Crocker. The committee also reviewed and approved the 2007-08 travel plan. Mr. Cozart shared with the Board that the Committee discussed an unusual situation regarding a CPA firm named DuPont and Morgan which had been sold. The new owners include a CPA but neither DuPont nor Morgan is associated with the firm. Mr. Cozart said the new firm could not do this.

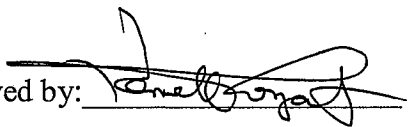
Mr. Cozart then discussed Ms. Biek's goals for 2007-08 and concluded his report. Ms. Biek commented that operating successfully requires a joint effort between the Board and the Administration and that she would like to focus on improving the relationship.

Mr. Underwood stated that one of the Board's goals is to educate other branches in state government so the public would be better served. Ms. Biek then introduced Noell Rembert, Customer Relations Manager for Commerce & Insurance and asked if she would like to speak on projects developed by the Administration to improve public relations. Ms. Rembert said that she was developing brochures for CPAs and other occupation to assist the public in making an informed decision. Ms. Rembert said that she is working with Consumer Affairs to make things more available to the public.

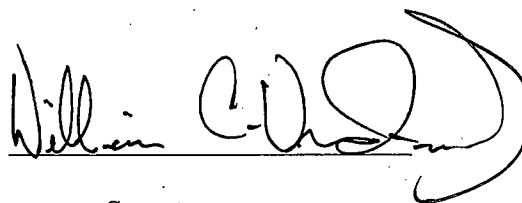
Teresa Jeter-McAvoy stated there was still some old business. She indicated that she had review the content of the Tennessee Specific Law and Rules course that is presented by Ms. Biek and Mr. Crocker and that it should be approved. **Mr. Alexander made the motion and Mr. Creswell seconded the motion. The motion passed.**

Mr. Cozart took a moment to inform the Board about the importance of NASBA. He urged members to get involved with NASBA. The regional meetings have break out sessions that are very valuable and provide lots of information that the Board deals with in their meetings. Tennessee has fewer representatives than many other states. Mr. Cozart would like for the Board to approve sending 4 board members to the June regional meeting in Asheville, NC. Mr. Cozart also indicated that the next Board Meeting would include a retreat which would be partially held at NASBA.

Mr. Cozart informed the Board that he had met with Meredith Sullivan, Assistant Commissioner for the Regulatory Boards, and that she had requested more notice to CPAs regarding the renewal postcards. As a result, Ms. Biek will be writing a letter to inform all CPAs about postcard renewal notices and the ethics CPE requirement. With no new business on the agenda, the meeting was **adjourned**.

Approved by: 

Chairman


William Cozart

Secretaru